

JTIP Handout: Lesson 17 – Challenging Transfer to Adult Court

FORENSIC EXERCISE

Part 1: Preparing for the Transfer Hearing

PARTICIPANT INSTRUCTIONS:

You are being provided with a highly condensed sample probation report for Christopher Field. This report will be submitted to the juvenile court judge in your jurisdiction for an upcoming transfer hearing in his case. You are Christopher's defender. Please take 5 to 7 minutes to read over the report and outline the steps you would take to adequately prepare for the transfer hearing. As you do so, consider the following questions:

1. *What investigation will you conduct to prepare for the transfer hearing?*
2. *Will you seek any evaluations? If so, what evaluations?*
3. *What witnesses do you expect the government to call?*
4. *What witnesses will you call?*
5. *What are some preliminary theories against transfer?*

PROBATION REPORT FOR CHRISTOPHER FIELD

Age: 15

School: Mariner High School

Grade: 9th

Performance: He is failing most of his classes.

Attendance: 7 unexcused absences this year

Instant Offense:

Arrested: December 14, 2016

Charge: Assault with a Dangerous Weapon (knife), Aggravated Assault

Government's Allegation:

On December 14, 2017 at the high school football game, police observed a large crowd gathered and making a great deal of noise under the bleachers. Several officers ran to the scene and observed

Christopher Field stabbing the complainant repeatedly with a knife. The officers broke up the fight, called for an ambulance and took Christopher into custody. The officers interviewed a few of the students, all of whom reported that they observed a verbal argument between Christopher and the complainant, but that Christopher took the first swing. The complainant did not have a knife or any other weapon. Christopher was arrested. Medical records reveal that the complainant was unconscious upon arrival at the hospital, but will survive. The complainant suffered multiple stab wounds to his arms, face and torso. His face will likely be permanently disfigured.

Youth's Statement:

While at the high school football game, this guy was talking smack about our team. He was some kid from the other team's school, I think. I told

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him to be quiet and to respect the home team. The kid then threatened to mess me up. I laughed and told him to try. Then he came at me with a screwdriver he pulled from his pocket. I pulled out a small knife I had in self-defense. I cut him on the arm as he lunged at me. He then really attacked me and we began to fight. The next thing I knew a few officers approached me and I was placed under arrest.

Prior Court Involvement:

Christopher was arrested for possession of marijuana last year. Christopher was initially placed in a diversion program, but he continued to test positive for marijuana during random spot tests and was ultimately charged in the matter. Christopher pleaded guilty and recently completed nine months of probation; however, he still continues to test positive for marijuana.

Summary of Family History:

Christopher lives with his mother and sister in a two-bedroom apartment. The family has resided here for two years. The household is supported by the mother's income. Christopher's father passed away five years ago. The mother describes her home life as fine. She is currently employed as a waitress at a local chain restaurant. She was unemployed last year. The mother denies any drug or alcohol use and does not have a criminal record.

The mother reports that Christopher has always been a good child and did not require extreme measures of discipline.

The Youth's Development:

According to his mother, Christopher has not reached developmental milestones appropriately. Christopher was placed in special education at an early age. He was held back one year in middle school.

The mother describes Christopher's friends as being nice, but admits that she does not know many of them. Christopher recently has been "hanging out all night." The mother does not know where Christopher goes. The mother feels

that peer pressure is a factor in his recent maladaptive behavior.

Christopher enjoys playing basketball and going to the movies. Christopher plans to obtain his GED and seek gainful employment.

School History:

Christopher has been a special education student since the 5th grade. He has an Individual Education Plan (IEP) that is updated each year, with quarterly progress reports. Unsuccessful completion of the 6th grade resulted in Christopher being held back one year. He recently entered Mariner High School this past year and has a new IEP. The school counselor reports that Christopher is not progressing in his plan and does not participate in the services that are offered to him. His grades remain low and he does not show interest in improvement.

Drug Use:

Christopher tested positive for marijuana. He admits to frequent marijuana use.

Evaluation:

Christopher does not seem very remorseful for his actions. He says that he never meant to hurt the complaining witness, but that the complaining witness had it coming to him. He has not learned to manage his anger. Christopher's mother has not punished him for his behavior and continues to let Christopher do whatever he wants and go wherever he wants.

Christopher continues to use drugs and does not participate in the services offered through his IEP at school. Christopher's behavior does not support amenability to treatment.

Recommendation:

We respectfully recommend that Christopher Field be transferred to the jurisdiction of adult criminal court.

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Part 2: Cross of a Government Witness at the Transfer Hearing

PARTICIPANT INSTRUCTIONS:

You are now being provided with a summary of what you learned after carefully investigating Christopher's social history. You are also being provided a summary of testimony given on direct examination by Christopher's school counselor at the transfer hearing. Take a few minutes to read the summaries and think about strategies to support amenability to treatment. Prepare a cross-examination of the school counselor with these strategies in mind. Be prepared to perform this cross-examination.

INVESTIGATION FOR TRANSFER HEARING

When you were appointed to represent Christopher, you immediately requested all of Christopher's school records including: attendance records, disciplinary records, report cards, any and all psychological evaluations, all special education records, the most recent IEP and prior IEPs and IEP progress reports.

From Christopher's school records, you learned that Christopher has had two psychological evaluations since he was placed in special education in the 5th grade. There were concerns that Christopher had a limited IQ and some behavioral issues and that an evaluation would better assist school educators in setting up appropriate services for Christopher. The first evaluation was conducted while Christopher was in the 5th grade. Christopher was diagnosed with mixed receptive-expressive language disorder. The evaluation recommended services to address these diagnoses that were to be provided by the school system through community-based

programs. You learn that Christopher was never placed in such programs. Christopher had another psychological evaluation this past year and was diagnosed with the same disorder along with depression. Again, the evaluation recommended services in the community, but to your knowledge nothing has been done by the school counselor to enroll Christopher in these programs.

In reviewing Christopher's IEP, you noticed that the treatment plan specified tutoring in the areas of reading comprehension and math. However, Christopher reports that he never received tutoring in either subject. To his knowledge, he was never asked about tutoring. Christopher's grades never improved. Even more troubling is the fact that Christopher's IEP has not changed in the last few years. No adjustments were made to his plan to address his special education needs, nor were any services put in place to manage the diagnoses from his psychological evaluations.

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DIRECT EXAMINATION OF SCHOOL COUNSELOR

On direct examination, the school counselor testified that Christopher is a troubled child that has not shown improvement academically or behaviorally. She reported that Christopher is a

special education child who does not show an interest in school, is disruptive in class and continues to receive failing grades. She stated that Christopher was not receptive to assistance.